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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,033	11/20/2003	Dale Maenke	2267.677US03	7164

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/718,033	Applicant(s) MAENKE, DALE	
	Examiner James N. Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1, 10 and 21 limit the membrane being “sealingly affixed to the body portion in an outer sealing band” (emphasis added). To the best degree the Examiner understands the claimed invention, the membrane contains an outer sealing band, and the entire unit is sealed to the undersurface of the cap. However, it is unclear how the body portion is affixed in an outer sealing band. It is suggested the Applicant amend the claim to better define the structure of the membrane and the outer sealing band, and how these are connected to the undersurface of the cap.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 and 12-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarz et al. US 5,988,414 in view of Lake et al. US 6,196,409.

Schwarz '414 teaches a cap and membrane, comprising a PTFE layer (7) on a carrier member which may be placed on one or both sides of the membrane. See column 4, lines 24-36. The passage further discloses the carrier member may be “a grid,” which inherently comprises a cross sealing band. Furthermore, column 3, line 38 teaches the thickness of the membrane to be “about 1 to 100 micrometers.” This anticipates the claimed thickness, as 0.002 inches converts to 5.08 micrometers.

Examiner reads the outer periphery of the membrane as the “outer sealing band.”

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Schwarz '414 fails to teach the membrane being affixed to the undersurface of the cap.

Lake '409 teaches in column 5, lines 7-12 it is known to affix a membrane to the undersurface of a cap via adhesives, heat sealing, clamping or hot-stamping.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the membrane of Schwarz '414, affixing it to the undersurface of the cap by adhesives, heat sealing, clamping or hot-stamping, as taught to be known equivalent affixing means by Lake '409.

Regarding claims 6, 13 and 29, the embodiment of Schwarz '414 figures 9 and 10 teach a bowl-shaped protective member (21).

Regarding claims 7, 14, and 30, Schwarz '414 teaches in column 4, last line through column 5 lines 1-3 that the surge protection element contains holes which permit liquid passage, and thus would function as vents.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarz et al. US 5,988,414 in view of Lake et al. US 6,196,409 as applied above to claim 10 and further in view of Lima et al. US 5,480,056.

Schwarz '414 as modified fails to teach a cylindrical container.

Lima '056 teaches cylindrical drum with an exteriorly-threaded collar for containing liquids.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the closure cap of Schwarz '414 to the container of Lima '056 because the former is taught to be suitable for sealing containers containing liquids.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
See attached PTO-892, citing relevant references.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER